

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JACOB MARTIN,

Petitioner,

Case No. 1:06-CV-536

v.

HON. ROBERT HOLMES BELL
KENNETH McKEE,

Respondent.

/

**ORDER ADOPTING REPORT AND RECOMMENDATION AND
DENYING PETITION FOR WRIT OF HABEAS CORPUS**

This matter is before the Court on Petitioner Jacob Martin's objections to the Magistrate Judge's April 8, 2009, Report and Recommendation ("R&R") recommending that Petitioner's § 2254 petition for writ of habeas corpus be denied. (Dkt. No. 37.) The R&R was duly served on the parties.

This Court is required to make a *de novo* review upon the record of those portions of the R&R to which specific objections have been made. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b); *see also Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995) ("[A] general objection to a magistrate's report, which fails to specify the issues of contention, does not satisfy the requirement that an objection be filed. The objections must be clear enough to enable the district court to discern those issues that are dispositive and contentious."). Although the Magistrate Judge's R&R is reviewed *de novo*, this Court must review the state court

proceedings consistent with the standards set forth in 28 U.S.C. § 2254.

Petitioner objects to the conclusions reached in the R&R with respect to each of the four issues raised in his petition. Petitioner contends that, contrary to the conclusions reached in the R&R, his confession was made involuntarily; the failure to instruct on the lesser included offense was a clear miscarriage of justice; the failure to grant his request for substitute counsel resulted in a fundamentally unfair trial; and the instruction to the jury that it could “infer” intent to kill from the use of a dangerous weapon, without an instruction to the contrary, i.e., that the weapon could have been used for another purpose such as self-defense, amounted to an improper shifting of the burden of proof and resulted in a fundamentally unfair trial.

Each of these issues has been thoroughly addressed in the R&R. Petitioner has not identified any specific errors in the R&R’s analysis. Upon *de novo* review, the Court is satisfied that the R&R accurately recites the facts and correctly applies the pertinent law. Accordingly,

IT IS HEREBY ORDERED that Petitioner’s objections to the Report and Recommendation of the Magistrate Judge (Dkt. No. 38) are **DENIED**.

IT IS FURTHER ORDERED that the April 8, 2009, R&R (Dkt. No. 37) is **APPROVED** and **ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Petitioner’s petition for writ of habeas corpus (Dkt. No. 1) is **DENIED**.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**. 28

U.S.C. § 2253(c); *Slack v. McDaniel*, 529 U.S. 473 (2000).

Dated: August 18, 2009

/s/ Robert Holmes Bell

ROBERT HOLMES BELL

UNITED STATES DISTRICT JUDGE